No. E1999-00957-SC-R11-CD
Supreme Court of Tennessee. at Knoxville

State v. Hicks

55 S.W.3d 515 (Tenn. 2001)
Decided Sep 11, 2001

No. E1999-00957-SC-R11-CD.

Filed September 11, 2001. May 2, 2001 Session.

Appeal by Permission from the Court of Criminal Appeals Criminal Court for Hamilton County No. 221717 Hon. Douglas A. Meyer, Judge.

516 Reversed; Indictment Dismissed. *516

Jerry H. Summers, Chattanooga, Tennessee, for the appellant, Larry Allen Hicks.

Paul G. Summers, Attorney General and Reporter; Michael E. Moore, Solicitor General; Daryl J. Brand, Associate Solicitor General, Nashville, Tennessee, for the appellee, State of Tennessee.

William M. Barker, J., delivered the opinion of the court, in which Janice M. Holder, J., joined. E. Riley Anderson, C.J., filed a concurring opinion, in which Adolpho A. Birch, Jr., J., joined. Frank F. Drowota, III, J., filed a concurring and dissenting opinion.

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OPINION

WILLIAM M. BARKER, JUSTICE

The primary issue in this case is whether drivers' license roadblocks are constitutionsally reasonable under Article I, section 7 of the Tennessee Constitution. After officers stipped the appellant at a drivers' license checkpoint, they discovered marijuana in the front seat of his car. The appellant later successfully moved to suppress the evidence, arguing that the roadblock did not conform to this Court's decision in *State v. Downey*, 945 S.W.2d 102 (Tenn. 1997). The State appealed to the Court of Criminal Appeals, which reversed the trial court and found that the roadblck was constitutionally reasonable. We granted permission to appeal and hold that the roadblock in this case was established and operated contrary to Article I, section 7 and our decision in Downey. We reverse the judgement of the Court of Criminal Appeals.

FACTUAL BACKGROUND

At 1:15 a.m. on October 11, 1997, the appellant, Larry Allen Hicks, was stopped at a roadblock on Suck Creek Road near the Hamilton County and Marion County line. This roadblock, which was established ostensibly as a drivers' license roadblock pursuant to General Order 410 of the Department of Safety, was conducted by six police officers, including two officers each from the Tennessee Highway Patrol, the Chattanooga Police Department, and the Red Bank Police Department. One of the Chattanooga officers was a K-9 officer, and another officer carried a picture of a suspect known as the "North Chattanooga rapist."

After stopping the appellant's car, Officer Penny of the Red Bank Police Department requested to see the appellant's license. During this time, one officer on the scene detected the smell of marijuana coming from the appellant's car, and the K-9 officer walked his dog around the car to sniff for drugs. When the dog alerted that drugs were present, the officers placed the appellant under arrest and called their supervisor, Lieutenant

Ronnie Hill of the highway patrol, to the scene of the stop. A subsequent search of the appellant's car uncovered five pounds of marijuana in the passenger seat. Neither of the highway patrol officers personally participated in the appellant's stop or arrest.

Following his arrest, the appellant moved to suppress the evidence against him, alleging that the stop was unreasonable under Article I, section 7 of the Tennessee Constitution and that it represented an arbitrary intrusion into his reasonable expectation of privacy. At the hearing on the motion held on November 10, 1998, the appellant called one of the officers, Sergeant Gregory Short, to testify as to the details of the roadblock. Officer Short stated that the officers
520 did *520 not provide any advance publicity concerning the roadblock, that they did not post any signs warning approaching motorists of the roadblock, and that they did not use any orange safety cones to direct traffic. He also testified that none of the officers was wearing a safety vest or carrying an illuminated baton as was otherwise required by General Order 410 for night roadblocks. According to Officer Short, the only evidence that a roadblock was in operation was the presence of the officers and the two highway patrol cars. Finally, Officer Short testified that officers other than those with the highway patrol stopped cars to request licenses and that some officers questioned drivers further about matters unrelated to the license check.

The appellant also called Lieutenant Hill to testify as to the operation of the roadblock. Lieutenant Hill stated that he was ordered to supervise the roadblock during his shift by his troop leader, Lieutenant Phillips, and that he explained to the other officers already present that the purpose of the roadblock was to check for drivers' licenses. Despite having "supervisory" authority over the operation of the roadblock, Lieutenant Hill testified that he was unaware that the other officers on the scene were not following the specific requirements of General Order 410; that he did not know why the Red Bank or Chattanooga officers were present or who called them; and that he was unaware of the actions of certain officers questioning drivers about the "North Chattanooga rapist." Lieutenant Hill also confirmed that he did not participate in the appellant's stop or arrest.

After hearing the testimony, the trial court granted the appellant's motion to suppress. The State appealed to the Court of Criminal Appeals, which reversed the trial court's decision. The intermediate court held that drivers' license roadblocks are generally permissible under the Tennessee Constitution, and a majority of the court further held that the particular roadblock at issue in this case was operated in a reasonable manner. In dissent, Judge Tipton wrote that because an officer other than a state trooper stopped the appellant's car, the drivers' license checkpoint was statutorily illegal. He further reasoned that because the statute represented a legislative declaration that such stops were unreasonable, the trial court's suppression of the evidence should be affirmed.

The appellant then requested permission to appeal to this Court, which we granted, on the following three issues: (1) whether drivers' license roadblocks are unconstitutional *per se*; (2) whether the roadblock in this case was unconstitutional for its failure to follow the guidelines established by our decision in State v. Downey, 945 S.W.2d 102 (Tenn. 1997); and (3) whether the roadblock was unlawful because of its delegation of statutory authority to local police officers to stop motorists for a license check.[1] We hold that the State has
521 *521 failed to establish a sufficiently compelling interest justifying the need to maintain drivers' license roadblocks and that the particular roadblock in this case failed to comply with the standards set forth in Downey. The judgment of the Court of Criminal Appeals is reversed.

[1] We also granted permission to appeal to decide whether Tennessee Code Annotated sections 55-50-351(a) and 40-7-103(c) are

unconstitutional because they allow officers of the Tennessee Highway Patrol to randomly stop motorists to check drivers' licenses. We agree with the Court of Criminal Appeals in this case that the decision of the United States Supreme Court in Delaware v. Prouse, 440 U.S. 648 (1979), and our opinion in Robertson v. State, 184 Tenn. 277, 198 S.W.2d 633 (1947), seem to substantially undermine the constitutional propriety of these two statutes. See also State v. McCulloch, 906 S.W.2d 3, 5 (Tenn.Crim.App. 1995) ("[I]t is well established that baseless random vehicle stops for the mere purpose of checking license and registration information are impermissible under both state and federal law."). Nevertheless, because this issue was not raised in either of the lower courts, we decline to fully address it here. Moreover, application of the plain error doctrine is not appropriate in this case because construction of these statutes is not necessary to accomplish substantial justice — this case does not involve random stops by officers of the Tennessee Highway Patrol. See State v. Smith, 24 S.W.3d 274, 282 (Tenn. 2000).

STANDARD OF APPELLATE REVIEW

When reviewing a trial court's findings of fact and conclusions of law on a motion to suppress evidence, we are guided by the standard of review set forth in State v. Odom, 928 S.W.2d 18 (Tenn. 1996). Under this standard, "a trial court's findings of fact in a suppression hearing will be upheld unless the evidence preponderates otherwise." Id. at 23. However, when the trial court does not set forth its findings of fact upon the record of the proceedings, we will decide on our own where the preponderance of the evidence lies. Fields v. State, 40 S.W.3d 450, 457 n. 5 (Tenn. 2001); see also Ganzevoort v. Russell, 949 S.W.2d 293, 296 (Tenn. 1997). As in all cases on appeal, "the prevailing party in the trial court is afforded the `strongest legitimate view of the evidence and all reasonable and legitimate inferences that may be drawn from that evidence.'" See State v. Carter, 16 S.W.3d 762, 765 (Tenn. 2000) (quoting State v. Keith, 978 S.W.2d 861, 864 (Tenn. 1998)). Finally, we review the trial court's conclusions of law under a *de novo* standard without according any presumption of correctness to those conclusions. See, e.g., State v. Walton, 41 S.W.3d 75, 81 (Tenn. 2001); State v. Crutcher, 989 S.W.2d 295, 299 (Tenn. 1999).

ANALYSIS

The Fourth Amendment to the United States Constitution provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." Article I, section 7 of the Tennessee Constitution similarly prohibits unreasonable searches and seizures, and we have long held that this provision is identical in intent and purpose with the Fourth Amendment. See, e.g., State v. Binette, 33 S.W.3d 215, 218 (Tenn. 2000); State v. Vineyard, 958 S.W.2d 730, 733 (Tenn. 1997). When examining the scope and application of the prohibition against unreasonable searches and seizures, we must be cognizant that the essence of this protection "is to `safeguard the privacy and security of individuals against arbitrary invasions of government officials.'" Downey, 945 S.W.2d at 106 (quoting Camara v. Municipal Court, 387 U.S. 523, 528 (1967)).

"Without question, the temporary detention of individuals during the stop of a vehicle by police, even if only for a brief period and for a limited purpose, constitutes a `seizure' which implicates the protection of both the state and federal constitutional provisions." Vineyard, 958 S.W.2d at 734; State v. Yeargan, 958 S.W.2d 626, 631 (Tenn. 1997). When an officer stops a motorist with probable cause or reasonable suspicion to believe that unlawful conduct has occurred, the stop is generally considered constitutionally reasonable under both the Fourth Amendment and Article I, section 7. Vineyard, 958 S.W.2d at 734.

522 On the other *522 hand, when an officer lacks even reasonable suspicion that criminal activity has taken place, his or her law enforcement authority "is limited to informal questioning of the persons involved."State v. Crutcher, 989 S.W.2d 295, 300 (Tenn. 1999);see also State v. Daniel, 12 S.W.3d 420, 425 (Tenn. 2000).

In one limited circumstance, however, this Court has permitted officers to stop and detain a vehicle without even a modicum of suspicion of unlawful conduct. In State v. Downey, 945 S.W.2d 102 (Tenn. 1997), this Court held that officers may stop motorists at a roadblock to detect drivers operating under the influence of alcohol, even though the conduct of the motorists was otherwise "ordinary, innocent, and free from suspicion." We acknowledged that this holding was "a departure" from the fundamental requirement that no seizure may occur without at least "a founded suspicion based on articulable facts that the person is or has engaged in criminal activity." Id. at 104. Nevertheless, we concluded that a sobriety roadblock may be constitutionally reasonable so long as "an individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field, and the seizure is carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers." Id. at 110. Accordingly, the essential questions to be resolved in this case are whether the roadblock at issue was permissible in light of Article I, section 7 of the Tennessee Constitution, our decision in Downey, and various protections afforded by statute.

I. IMPROPER DELEGATION OF STATE HIGHWAY PATROL AUTHORITY TO LOCAL POLICE OFFICERS

Because courts should not generally decide constitutional issues if the case may be properly resolved on nonconstitutional grounds, see State v. Burdin, 924 S.W.2d 82, 87 (Tenn. 1996);Owens v. State, 908 S.W.2d 923, 926 (Tenn. 1995), we first address whether the evidence in this case should have been suppressed because local police officers unlawfully stopped motorists to check drivers' licenses and vehicle registrations. Tennessee Code Annotated section 55-50-351(a) provides that

> [I]t is unlawful for any law enforcement officer of this state, except a state patrol officer or officer of the department, to demand the exhibition of such [drivers'] licenses, unless the operator of the motor vehicle is then engaged in, or immediately prior to such demand has been engaged in, a violation of any municipal ordinance or statute law of this state.

In addition, Tennessee Code Annotated section 40-7-103(c) (1997) provides that no officer "except members of the Tennessee highway patrol acting pursuant to [section] 4-7-104, shall have the authority to stop a motor vehicle for the sole purpose of examining or checking the operator's license of the driver of such vehicle." Citing both of these statutes, the appellant argues that the roadblock in this case was statutorily illegal because officers other than those with the Tennessee Highway Patrol actually stopped his car and requested to see his operator's license.

A majority of the intermediate court found that these statutes conflicted with Tennessee Code Annotated section 55-50-804 (1998), which requires a driver to display his or her license "upon demand of any officer or agent of the department or any police officer of the state, county or municipality . . . ." The majority then held that the conflict between section 55-50-804 and the statutes cited by the appellant should be 523 resolved in favor of the former *523 because it was the last in time to be enacted. Writing in dissent, Judge Tipton opined that the statutes cited by the appellant have not been superseded by section 55-50-804 because all three statutes can be harmoniously construed to permit local officers to

request an operator's license, so long as those same officers do not initiate the stop in order to do so.

We disagree with the majority of the Court of Criminal Appeals in so far as it found an irreconcilable conflict between these statutes. The legislature is always presumed to know of its prior enactments, see, e.g., State v. Levandowski, 955 S.W.2d 603, 604 (Tenn. 1997), and consequently, courts should find repeals by implication only when statutes cannot be construed harmoniously,see, e.g., Cronin v. Howe, 906 S.W.2d 910, 912 (Tenn. 1995). In this case, the various statutes can be reasonably construed so as to give effect to each, and we find no need to resort to the "last-in-time" canon of construction to resolve a supposed conflict.

Section 55-50-804 does not address the ability of officers *to initiate* a stop of a motor vehicle to conduct a license check, but it speaks only to the general authority of officers to request a driver to display his or her license. On the other hand, sections 55-50-351(a) and 40-7-103(c) are quite emphatic that only state highway patrol officers possess the authority to initiate the stop of a vehicle for this purpose, and these two statutes do not speak to whether other officers may request a license *after* a stop has been initiated. Consequently, we agree with Judge Tipton that the legislature probably intended for section 55-50-804 to apply only to motorists that have already been stopped for a violation of the law. Assuming this to be the case, then, the roadblock at issue here was in clear violation of sections 55-50-351(a) and 40-7-103(c) because the record unequivocally shows that the appellant's stop was initiated by local police officers.

However, our finding that the roadblock in this case was operated contrary to statutory requirements does not necessarily resolve the issue of whether the evidence seized as a result of this roadblock should be suppressed. Importantly, suppression of evidence is not required if the statutory violation does not actually infringe upon a specific constitutional protection or guarantee. See Walton, 41 S.W.3d at 93. Judge Tipton believed that because the statutes represented a legislative declaration that seizures contrary to the statute were unreasonable, the violation of sections 55-50-351(a) and 40-7-103(c) warranted suppression of the evidence obtained from the roadblock. While this view may have possessed some merit at the time that Judge Tipton penned his dissent, we are reluctant to adopt a similar holding today. Since the time that this case was pending before the intermediate court, the legislature has amended section 55-50-351(a) to permit "any police officer of the state, county, or municipality" to request display of drivers' licenses. See 2001 Tenn. Pub. Acts ch. 700, § 12 (effective July 1, 2001). Accordingly, any legislative declaration in this regard must be weighed in favor of approving the stop.

Moreover, we have found no authority for holding that the employment status of the officer requesting to see the license may alone be determinative of the constitutional reasonableness of the seizure. Instead, the statutory violation appears relevant only to the extent that it, along with other factors, contributes to finding an unreasonable intrusion on the liberty and privacy of motorists. Therefore, because resolution of this
524 statutory issue does not *524 lead to a full and proper resolution of the case, we must address the constitutionality of the roadblock itself.

II. CONSTITUTIONALITY OF THIS ROADBLOCK UNDER ARTICLE I, SECTION 7 OF THE TENNESSEE CONSTITUTION

Our decision in State v. Downey did not address the constitutional propriety of roadblocks for purposes other than to detect motorists driving under the influence of alcohol. Recognizing this fact, the appellant has urged this Court to find that roadblocks established for the sole purpose of checking drivers' licenses and vehicle registration

are unconstitutional *per se* under the federal and state constitutions. Although the United States Supreme Court has never expressly held that drivers' license roadblocks are constitutionally permissible under the Fourth Amendment, it has suggested that such may be the case upon a proper showing. For example, in Delaware v. Prouse, 440 U.S. 648, 663 (1979), the United States Supreme Court held that motorists could not be randomly stopped by officers checking for drivers' licenses or vehicle registration, but it noted that the questioning of all motorists at a roadblock could be one "possible alternative." The Court has also acknowledged this view, albeit in dicta, in at least two cases since Prouse. See City of Indianapolis v. Edmond, 531 U.S. 32, 39-40 (2000); Texas v. Brown, 460 U.S. 730, 739 (1983) (plurality opinion).

Nevertheless, the issue of whether a drivers' license roadblock is constitutionally permissible under the Tennessee Constitution has not been decided by this Court. We acknowledged in Downey that although federal cases interpreting the Fourth Amendment are "particularly persuasive" authority for construing Article I, section 7, the Tennessee Constitution can provide greater protection for its citizens against unreasonable searches and seizures. See 945 S.W.2d at 106. Accordingly, in analyzing the constitutionality of roadblocks under Article I, section 7, we adopted the test similar to that established in Brown v. Texas, 443 U.S. 47 (1979), which generally analyzes the reasonableness of seizures that are less intrusive than full arrest. See id. at 110. As applied by Downey to roadblocks, this test examines three factors: (1) the gravity of the public concerns served by the roadblock; (2) the degree to which the roadblock advances the public interest; and (3) the severity of the roadblock's interference with an individual's liberty or privacy. See id. at 107-08; cf. Brown, 443 U.S. at 50-51; Michigan v. Sitz, 496 U.S. 444, 450 (1990).

We reaffirm that the test adopted in Downey is to be applied in all cases involving constitutional challenges to roadblocks or checkpoints under the Tennessee Constitution. Although the Court of Criminal Appeals analyzed the issues in this case as constituting "per se" and "as applied" challenges, Downey made no such constitutional distinctions. It may be true that when the State cannot identify a sufficiently grave public concern justifying a roadblock, the roadblock could be characterized as being unconstitutional "per se." It may also be true that when a roadblock exhibits an unreasonable level of intrusion on liberty or privacy, it may be characterized as being unconstitutional "as applied." However, these characterizations encourage analysis outside of the test adopted in Downey, and this analysis creates a heightened danger that constitutional standards will not be uniformly and consistently applied. 525 Accordingly, we decline to *525 address the arguments in terms of unconstitutionality "per se" and "as applied" and instead continue to determine the reasonableness of this roadblock by using the three-pronged test as set forth inDowney.

A. THE GRAVITY OF THE PUBLIC CONCERN SERVED BY THE ROADBLOCK

With respect to the gravity of the public concerns served by drivers' license roadblocks, we must first identify the state interest in maintaining such roadblocks and then determine whether this interest is sufficiently compelling to abrogate constitutional protections against suspicionless stops. The presence of a sufficiently compelling state interest justifying a warrantless seizure at a checkpoint is an important, if not essential, factor going to the overall constitutional reasonableness of any such stop. The need and importance of this factor were acknowledged in Downey, which devoted considerable attention to examining whether the State possessed a sufficiently "compelling" interest in maintaining sobriety checkpoints.

Moreover, persuasive authority for initially requiring the presence of a sufficiently compelling state interest can be found in other cases decided since Downey's release, perhaps most notably the recent decision from the United States Supreme Court in City of Indianapolis v. Edmond. In that case, the Court held a roadblock unconstitutional solely because its primary purpose "contravene[d] the Fourth Amendment." See 531 U.S. at 42. Therefore, we believe that critical examination of the nature and presence of the state interest involved is an important and essential factor in ascertaining the reasonableness of any roadblock. As such, we first undertake a careful study of the State's asserted interest in this case and of the proof in the record to support the presence of this interest.

THE NATURE OF THE STATE'S INTEREST

The nature of the State's interest in this case is easily identified because the State has consistently argued that this roadblock was established only as a checkpoint to ensure highway safety by detecting and deterring unlicensed drivers. While some evidence admittedly exists to the contrary as to the true purpose of this particular roadblock, we will presume for sake of the present analysis that the State's interest is as asserted. Therefore, the essential inquiry here is whether the State's asserted interest is sufficiently compelling so as to justify suspicionless stops at a roadblock.

With respect to the sufficiently compelling nature of this interest, we acknowledge that we gave no specific indication inDowney of when a State interest becomes sufficiently compelling so as to justify suspicionless seizures at a checkpoint. However, it is clear from the analysis of that opinion that the State's interest in detecting and deterring drivers under the influence of alcohol was sufficiently compelling for three reasons: (1) the State's interest in maintaining the roadblock was directly tied to the ability of drivers to safely operate motor vehicles on the roads and highways of the state; (2) the harm sought to be eliminated by the roadblock was one that posed an imminent danger of death or serious bodily injury; and (3) the magnitude of the problem, coupled with its harm, was such that it commanded heightened
526 action.[2] When the purpose for a roadblock *526 is arguably related to maintaining highway safety, we believe that these standards as set forth in Downey are sound, and we therefore require a similar showing in this case. Although these standards do not necessarily comprise the *sine qua non* of a sufficiently compelling state interest when the roadblock is arguably related to highway safety, any additional considerations justifying suspicionless stops of an automobile should be related in kind.[3]

[2] In support of the compelling nature of the interest at stake in Downey, we found that the State's interest in detecting and deterring drunk drivers was directly tied to highway safety because operation of vehicles while under the influence of alcohol had resulted in more deaths and injuries "than from all the wars this country has fought." In support of the sheer magnitude of the DUI problem, the Court noted the "overwhelming" statistical evidence of the problem, the fact that the legislature has increased the penalties for DUI "at nearly every session," and anecdotal evidence from daily newspaper and television accounts of the "carnage and tragedy" of drunk driving.

[3] This required showing applies only to suspicionless stops at investigatory, non-emergency roadblocks. We do not address the required showing for other checkpoints, such as those established for apprehending fleeing felons or for fixed weigh-and-inspection stations.

The concurring-dissenting opinion authored by Justice Drowota asserts that by requiring specific proof of the presence of the State's compelling interest, we are somehow being unfaithful to the test adopted in Downey. Indeed, the concurring-dissenting opinion takes the position that while the

importance of the State's interest will affect the "weighing process," no case has required the State to first possess a compelling interest before examining the other aspects of the roadblock. In essence, the concurring-dissenting opinion asserts that the absence of a sufficiently compelling interest may be offset by minimal police intrusion into the personal liberty and privacy of the motorists. We do not agree.

In asserting that no case has ever required the State to initially set forth a sufficiently compelling interest, the concurring-dissenting opinion overlooks the fact that identifying a separate and distinct state interest with regard to Article I, section 7 was key to Downey itself. See 945 S.W.2d at 109-10. It is true that Downey did not dwell upon the importance of the State's interest in curbing incidents of DUI, but unlike the asserted interest in this case, the compelling nature of the interest in Downey was already abundantly clear from the proof as identified by the Court. As such, the Court instead focused its opinion on whether the roadblock's intrusion into personal liberty and privacy was too severe. The Court's primary focus on the severity of the intrusion, however, should not be construed as minimizing the need to identify and prove a sufficiently compelling interest in the first instance. Importantly, theDowney Court's discussion of the standards to minimize intrusion and limit discretion occurred only *after* the Court first "recognize[d] the State's compelling interest in detecting and deterring motorists who drive while under the influence of alcohol." 945 S.W.2d at 110.

Moreover, the concurring-dissenting opinion makes no mention in this regard of the United States Supreme Court's recent decision to the contrary in Edmond. In that case, the Court held a roadblock invalid *solely* because the asserted interest — general crime detection — was an "impermissible purpose" under Fourth Amendment analysis. See 512 U.S. at 47. Notably, the Court did not further examine the issue of whether the roadblock was established with minimal intrusions into the liberty and privacy of the motorists, but it instead affirmed that "a program driven by an impermissible purpose may be proscribed while a program impelled by licit purposes is permitted, even though the challenged
527 conduct *527 may be outwardly similar." Id. To be clear, then, as far as the Fourth Amendment is concerned, the inquiry of whether a sufficiently compelling interest exists in the first instance is a separate, and independent, inquiry from whether the level of police intrusion into liberty and privacy is minimal.

Both Downey and Edmond are quite persuasive authorities for the view that a roadblock will necessarily fail constitutional examination if it lacks a sufficiently compelling state interest. As such, contrary to the conclusion reached by the concurring-dissenting opinion, we conclude that the presence of a sufficiently compelling interest is necessary under Article I, section 7 before an examination of the other aspects of a roadblock may proceed.

PROOF SUPPORTING THE STATE'S INTEREST IN THIS CASE

Turning to the proof in this case, we find that despite the State's argument that drivers' license roadblocks are necessary to ensure the safety of motorists on the roads, no evidence in the record establishes this fact or, even if true, establishes that this interest is sufficiently compelling to justify suspicionless stops. Precisely because a roadblock "is a departure from [the] fundamental principles" contained in Article I, section 7 that a seizure must be accompanied by at least some measure of individualized suspicion, Downey, 945 S.W.2d at 104, we will not presume the presence of a compelling state interest to justify further expanding the scope of permissive suspicionless seizures. As we have noted before in other cases, a warrantless seizure "`is presumed unreasonable, and evidence discovered as a result thereof is subject to suppression, unless the State demonstrates that the search or seizure was

conducted pursuant to one of the narrowly defined exceptions to the warrant requirement.'" State v. Bridges, 963 S.W.2d 487, 490 (Tenn. 1997); State v. Crutcher, 989 S.W.2d 295, 299-300 (Tenn. 1999).

Because the exceptions to the warrant requirement "are jealously and carefully drawn," the State must show that "the exigencies of the situation made the search [or seizure] *imperative*." State v. Bartram, 925 S.W.2d 227, 230 (Tenn. 1996) (emphasis added and internal quotations omitted). Therefore, as required in Downey, the State must show that drivers not possessing a license are unable to safely operate motor vehicles on the roads and highways of this state; that an unlicensed driver invariably presents an imminent danger of death or serious bodily injury to other drivers that is not typically present with licensed drivers; and that the safety threat from unlicensed drivers is of such a magnitude that the problem, coupled with its risk of harm, commands heightened attention. Only when this showing is made may courts find that the State has a sufficiently compelling interest to justify maintaining drivers' license roadblocks.

We are not unaware of the fact that some decisions from the Court of Criminal Appeals appear to have approved of drivers' license roadblocks after finding that the State possesses "significant" and "legitimate" interests in regulating vehicles and drivers on state highways.[4] We agree that the State possesses valid and important interests in this respect, but because the State has the burden of establishing the reasonableness of the seizure, one
528 may not merely presume that these interests *528 are sufficiently compelling to justify abrogating constitutional guarantees. Only when the State makes the required showing, as it has previously done with sobriety checkpoints, may courts accept the presence of the compelling interest and proceed to further analyze the roadblock under this decision and Downey.

[4] See, e.g., State v. Steward, No. M1999-01284-CCA-R3-CD, 2000 WL 1246436 (Tenn.Crim.App. filed at Nashville, Aug. 18, 2000); State v. Hagy, No. 03C01-9505-CR-00152, 1995 WL 712355, (Tenn.Crim.App. filed at Knoxville, Dec. 5, 1995).

Using a rationale similar to that sometimes adopted by the intermediate court, the concurring-dissenting opinion in this case opines that the State possesses a "vital" interest in maintaining drivers' license roadblocks sufficient to permit suspicionless stops. More specifically, the concurring-dissenting opinion presumes that such roadblocks are urgently needed because (1) persons too young to drive pose a threat to public safety, and (2) persons who have had their licenses suspended for DUI convictions or traffic offenses often disregard that suspension, thereby endangering public safety on the roads. We do not disagree that such concerns may be present, and if these concerns demonstrate a real need to curb a substantial and imminent threat to the safety of motorists on public roads, which distinctly results from the conduct of these unlicensed drivers, then the first prong of theDowney test will have been satisfied. Indeed, it is for these reasons, and perhaps some others, that we have clarified the State's burden of proving the presence of these concerns in future cases.

To be sure, however, the record in this case contains absolutely no proof of the urgent necessities identified by the concurring-dissenting opinion, and mere suspicions and conjectures of the possibilities of such dangers are never adequate to justify abrogation of constitutional liberties. History has demonstrated that the infinite faculties of mankind are such that one may devise any supposed danger or peril to justify further erosion of constitutionally protected liberties. If these factually unsupported suppositions could justify further abrogation of the warrant requirement of Article I, section 7, then every protection now guaranteed by this important provision would be subject to the irrational assault of pretended evils certain to follow. Merely

declaring that the interest exists in theory is not the same as demonstrating that the need exists in fact.

Furthermore, by alleviating the State's burden of production regarding its compelling interest, the concurring-dissenting opinion essentially places the burden on the defendant to retain his or her constitutional protections under Article I, section 7 by disputing the State's presumed interest. This Court has always required the State to bring forth evidence to demonstrate the propriety of a warrantless search. By presuming the presence of a sufficiently compelling interest without proof in the record of any real dangers involved, the concurring-dissenting opinion takes a perilous step in a path that shifts the burden of proof to the defendant to show the lack of a sufficiently compelling interest justifying a warrantless seizure. If other courts have taken similar paths as the concurring-dissenting opinion has attested, Article I, section 7 demands that we take the road less traveled.

Finally, the concurring-dissenting opinion expresses the concern that the requirements for establishing the presence of a sufficiently compelling state interest are too burdensome. These requirements are precisely those demanded by Downey itself, and the extent of the burden is neither more nor less than was required by that case. Indeed, while the burden to be carried by the State may be heavy, one may legitimately question what purpose is served by abrogating Downey when the label of the roadblock is changed. Just as
529 the Court looked to proof of a sufficiently *529 compelling interest in Downey to justify sobriety checkpoints, we must also demand similar proof to justify drivers' license checkpoints.

However, while we will not presume that proof exists supporting the presence of a sufficiently compelling state interest, we are also unwilling to adopt the views of Chief Justice Anderson and hold that such evidence *cannot* exist either. The concurring opinion authored by the Chief Justice correctly asserts that "the possession of a drivers' license does not necessarily assure the safety and fitness of any motorist." However, the concurring opinion then asserts that no such proof *could* ever exist, because "there is no basis upon which to reasonably conclude that a motorist who is not in possession [of] a valid drivers' license necessarily poses an immediate danger of death or serious bodily injury great enough to warrant the suspicionless stops of all drivers at a checkpoint." (emphasis in original).

We are reluctant to hold today, as would the concurring opinion, that the lack of proof in this record conclusively demonstrates that the State has no sufficiently compelling interest in establishing a drivers' license roadblock. Rather, the lack of evidence in this record stems more from the fact that the State has not had a meaningful opportunity to develop the record in this regard. Hicks did not specifically assert the lack of a sufficiently compelling state interest in support of his original motion to suppress, and the trial judge apparently did not consider this issue in granting the defendant's motion. Indeed, this issue was not squarely presented in any court until Hicks raised it for the first time as appellee in the Court of Criminal Appeals.

Given the procedural history of this case, we disagree that the State had a meaningful opportunity to introduce proof of its interest in maintaining drivers' license roadblocks. Importantly, both this Court and the Court of Criminal Appeals possess appellate jurisdiction only, and our ability to receive and hear evidence not presented in the trial court is severely restricted.See Duncan v. Duncan, 672 S.W.2d 765, 768 (Tenn. 1984); see also Tenn.R.App.P. 14. As such, we disagree that a party is necessarily afforded a meaningful opportunity to present evidence and be heard merely because an issue has been raised and determined in the appellate courts. Because our concern should always be to ensure that litigants are fully and fairly heard before their interests are adjudicated, prudence dictates that the

State be given a meaningful opportunity to present evidence of its claims before its interests are conclusively determined.

Had the motion to suppress squarely put the State on notice of its need to present evidence to show a sufficiently compelling interest to justify stopping motorists lawfully traveling along the highways of this state, and had the State under those circumstances failed to present such evidence, then we would not hesitate to agree with the conclusion reached by the Chief Justice. However, because our review of the record indicates that the issue was not pleaded or tried during the hearing on the motion to suppress, the prudent and reasonable path is for this Court to rule upon the record as developed in this case and not to foreclose the possibility that the State can establish a sufficiently compelling interest in future cases.

In demonstrating this sufficiently compelling state interest in these future cases, however, we emphasize that the State may not merely rely upon its general interest in maintaining highway safety to justify suspicionless seizures of its citizens, no
530 matter how "minimal" one *530 may be able to characterize the intrusion. To the extent that the State's justification for maintaining a roadblock does not reflect a real, compelling interest in curbing a substantial and imminent threat to the safety of motorists on public roads, one may be unable to distinguish this supposed interest in safety from a more general interest in ordinary crime control. However, as the United States Supreme Court has made clear, and as we agree has long been the law in Tennessee, in no case may the State establish a roadblock merely "to detect evidence of ordinary criminal wrongdoing."Edmond, 531 U.S. at 41. Instead, "[w]hen law enforcement authorities pursue primarily general crime control purposes at checkpoints . . . , stops can only be justified by some quantum of individualized suspicion." Id. at 47. Therefore, unlike many of our sister states, this Court will not presume the existence of a compelling interest until the State introduces some proof of the need to curb a substantial and imminent threat to the safety of motorists on public roads distinctly resulting from the conduct of unlicensed drivers.[5]

[5] We note, as does the opinion authored by Justice Drowota, that many federal and state cases interpreting the Fourth Amendment have found that the state may possess interests adequate to establish drivers' license roadblocks, though these cases uniformly reach this conclusion without the benefit of specific guidelines or requirements of proof. The concurring-dissenting opinion suggests that the showing required by this case is greater than that required by the Fourth Amendment, and it is apparently "puzzled" by our decision to closely adhere to Downey when doing so could result in the Tennessee Constitution granting greater protections to its citizens than would the Fourth Amendment.

Although the concurring-dissenting opinion correctly postulates that Article I, section 7 is "identical in purpose and intent" with the Fourth Amendment, it overlooks the fact that such identity of intent and purpose "does not necessarily correlate to coextensive degrees of protection. In fact, this Court's decisions applying the state constitution have been somewhat more restrictive than comparable federal cases in some search and seizure contexts." Planned Parenthood v. Sundquist, 38 S.W.3d 1, 13 (Tenn. 2000) (Drowota, J., concurring in judgment) (internal quotation marks omitted). Therefore, if following prior state constitutional precedent has the incidental effect of compelling a decision that is not necessarily warranted by federal law, we believe it to be required by Article I, section 7. To be clear, however, our decision today is grounded solely in Article I, section 7 and flows from our decision in Downey. Any federal cases cited as

authority for our interpretation of Article I, section 7 are used only for the purpose of guidance and do not themselves compel the result reached today. See Michigan v. Long, 463 U.S. 1032, 1041 (1983).

Moreover, we also emphasize that the State may not merely rely upon its general interest in maintaining the integrity of its drivers' licensing scheme to justify future roadblocks. We see no indication from the record that the State's interest in enforcing a drivers' license law is any greater than its interest in enforcing any other law, and indeed, the State's interest in enforcing other criminal laws is at least as great as it is in enforcing laws regulating drivers' licenses. If the State may not legitimately establish roadblocks to detect other violations, it follows that the State may not do so merely to enforce drivers' license laws. Therefore, to justify suspicionless stops in this context, the State must necessarily rely upon the need to curb a substantial and imminent threat to the *safety* of motorists on public roads distinctly resulting from the conduct of unlicensed drivers.

Accordingly, because the record has not been sufficiently developed in this case for this Court to make a definitive determination as to the compelling nature of the State interest involved, we cannot find that *531 the State has demonstrated a sufficiently grave public concern so as to warrant further expansion of the roadblock exception under the Article I, section 7. While we do not foreclose the possibility that the State could assert a compelling interest in future cases concerning the need to establish drivers' license roadblocks, the absence of any such evidence in this case must weigh very heavily against, if not be fatal to, finding the roadblock at issue here constitutionally reasonable.

B. THE DEGREE TO WHICH THE PUBLIC CONCERN IS FURTHERED BY THE SEIZURE

In addition to requiring a sufficiently compelling state interest, our decision in Downey also required an examination of the degree to which the presence of the roadblock advances that compelling state interest. In Prouse, the United States Supreme Court stated that any type of suspicionless seizure must promote the asserted state interest in a "sufficiently productive" fashion before it could "qualify as a reasonable law enforcement practice." 440 U.S. at 660. We recognized this principle inDowney, although we noted that courts should generally refrain from analyzing whether other constitutionally reasonable measures are *more* effective in accomplishing the state's interest. 945 S.W.2d at 108-09. Accordingly, this second prong of the Downey test may be satisfied when one can fairly say that roadblocks contribute in a meaningful way to achieving the sufficiently compelling state interest.

The State did not introduce any evidence at the suppression hearing to establish the presence of this factor. From our own review of the record, we note that the roadblock at issue here, which was conducted over a two-night period, did not uncover a single driver who was operating a vehicle without a valid license. Although the failure to detect any unlicensed drivers could be theoretically attributable to the deterrence provided by the roadblock, we seriously doubt that such was the case here because no advanced publicity of the roadblock was given to the public at large. As we recognized in Downey, the need to deter certain types of conduct can justify a roadblock even when the evidence otherwise suggests that the particular roadblock is ineffective in detecting the object of its operation. However, before motorists can be reasonably deterred by roadblocks, they must first be aware that they are likely to encounter such roadblocks, and advanced publicity is one key to ensuring this awareness. Cf. State v. Hooper, 29 S.W.3d 1, 11 (Tenn. 2000) (discussing publicity and public knowledge as a key factor in deterrence philosophy).[6] Therefore,

so long as the State chooses to rely on deterrence as a *532 rationale supporting any roadblock, we reiterate that advance publicity of the roadblock may be *essential*, and in those cases where this factor is absent, the State's ability to rely upon deterrence to justify the stops is correspondingly diminished.

> [6] It may be supposed by some that drivers would be deterred by the chance of encountering *unpublicized* roadblocks. Even if true, it cannot be doubted that deterrence is always enhanced by publicity and public knowledge of the roadblocks. Therefore, to the extent that the State relies upon deterrence as a justification for roadblocks, it must take some measures to ensure that deterrence is actually accomplished. Cf. State v. Garcia, 500 N.E.2d 158, 162 (Ind. 1986) ("[T]he deterrent effect of such a highly publicized program is obvious; such a visible project is bound to increase the perceived risk of arrest in the minds of those drunk drivers who are never arrested." (citing Lowe v. Commonwealth, 337 S.E.2d 273, 277 (Va. 1985))); People v. Bartley, 486 N.E.2d 880, 888 (Ill. 1985) ("In fact, if a major goal of a roadblock searching for drunken drivers is deterrence, that goal is promoted by publicity. The more aware drivers are that they may be stopped at such a roadblock, the more likely they will be to seek alternate means of transportation when they are drinking or to refrain from drinking when they know they will be driving.").

We also find no evidence in the record from which one could infer that the complete ineffectiveness of this roadblock in detecting unlicensed drivers was somewhat of an anomaly. For example, no proof exists that the time and site of this roadblock were chosen because of their effectiveness in detecting and deterring unlicensed drivers. The State introduced no proof that unlicensed drivers are particularly likely to be driving during the times that these roadblocks were in operation, *i.e.*, between 12:00 a.m. and 4:00 a.m., and we doubt that this fact is even supported by anecdotal evidence in a manner similar to that supporting drunk drivers. Nor did the State introduce evidence that the site of the roadblock was chosen because of the particularly high volume of traffic or numerous incidents of unlicensed drivers. Cf. Ingersoll v. Palmer, 743 P.2d 1299, 1315 (Cal. 1987). To be clear, these factors are not required to demonstrate that the checkpoint contributes in a meaningful way to achieving the compelling state interest. Nevertheless, to the extent that these factors are considered by law enforcement officers or are otherwise apparent on the face of the record, the questionable effectiveness of an individual roadblock may be mitigated.[7]

> [7] Indeed, the peculiar time of this "drivers' license" checkpoint and its seemingly remote location could be factors that give rise to a finding that its primary purpose was not to detect unlicensed drivers. Cf. State v. Stearns, 524 S.E.2d 554, 556 (Ga.Ct.App. 1999) ("A valid purpose of roadblocks is to locate and arrest those who are abusing the privilege of driving on public roads by driving while they are intoxicated. . . . It is not unreasonable that such roadblocks would be located where such drivers would be expected to be at a time they might be expected to be there."). By introducing some proof that unlicensed drivers are particularly likely to drive at this time of night or in this location, the State minimizes the risk that a court will find an administrative subterfuge or that the primary purpose of the roadblock is not sufficiently compelling to justify the suspicionless stops.

We cannot find a roadblock to be constitutionally reasonable unless the State first demonstrates some meaningful link between its establishment and the achievement of its compelling interest. Because the record in this case contains no such evidence, we cannot fairly conclude that the roadblock in this case meaningfully contributed to

achieving the state's interest in detecting and deterring unlicensed drivers. Taking issue with this conclusion, the concurring-dissenting opinion asserts that the second prong of the Downey test is met in this case because "there is no better way" of detecting unlicensed drivers than through roadblocks. Assuming this fact to be true, we note that the lack of other effective alternatives does not alone bestow the blessing of constitutional reasonableness upon an otherwise totally ineffective roadblock. Whatever else may be said of the presence of viable alternatives, it is clear that the roadblock must promote the asserted state interest in a "sufficiently productive" fashion before it can "qualify as a reasonable law enforcement practice." Cf. Prouse, 440 U.S. at 533 660.[8] Therefore, the *533 absence of this proof must also weigh heavily against finding that the roadblock here was constitutionally reasonable.

[8] Indeed, the concurring-dissenting opinion seems to beg the question of reasonableness in this regard. By overlooking the ineffectiveness of the roadblock in this case, the concurring-dissenting opinion assumes that the roadblock is a reasonable intrusion because there is "no better way" of detecting unlicensed drivers. However, because a seizure cannot be constitutionally reasonable if it is ineffective in achieving the state interest involved, cf. Prouse, 440 U.S. at 660, the effectiveness of a roadblock is an important measure of its constitutional reasonableness. Therefore, we disagree that the presence or lack of other alternatives should be of any great concern. Although we will not choose among various " *reasonable* law enforcement approaches," Downey, 945 S.W.2d at 110 (emphasis added), we will not abdicate our responsibility to determine what is reasonable in the first instance merely because "no better way" has been found.

C. INTRUSIVENESS OF THE ROADBLOCK AT ISSUE IN THIS CASE

Regarding the severity of the interference with personal liberty and privacy, we have held that a roadblock cannot be deemed constitutionally reasonable unless "it is established and operated in accordance with predetermined operational guidelines and supervisory authority that minimize the risk of arbitrary intrusion on individuals and limit the discretion of law enforcement officers at the scene." Downey, 945 S.W.2d at 104. To this end, our decision in Downey enumerated several characteristics of a roadblock that minimize the risk of arbitrary intrusion under Article I, section 7, including (1) stopping all cars traveling in both directions, unless congested traffic requires permitting motorists to pass through; (2) taking adequate safety precautions, such as warning approaching motorists of the roadblock and stopping cars only in a safe and visible area; (3) conducting the roadblock with uniformed officers and marked patrol cars with flashing emergency lights; and (4) providing advanced publicity of the roadblock to the public at large, separate from, and in addition to, any notice warnings given to approaching motorists. Although the absence of any one of these factors does not necessarily invalidate a roadblock, they each weigh heavily in determining the overall reasonableness of the checkpoint. Id. at 110-12 *passim*.

However, the most important attribute of a reasonable roadblock is the presence of genuine limitations upon the discretion of the officers in the field. Two facts are critical to finding that the officers' discretion on the scene was properly limited: (1) the decision to set up the roadblock in the first instance cannot have been made by the officer or officers actually establishing the checkpoint, and (2) the officers on the scene cannot decide for themselves the procedures to be used in operating the roadblock. In all cases, therefore, the State must show that some authority superior to the officers in the field decided to establish the roadblock, particularly as to its time

and location, and that the officers adhered to neutral standards previously fixed by administrative decision or regulation. See id. *passim*. To be clear, these factors are so essential to a reasonable roadblock that the absence of either of them will necessarily result in the invalidation of the stops.

FACTORS MINIMIZING THE RISK OF ARBITRARY INTRUSION

Applying these criteria to the roadblock in this case, we initially find that the roadblock lacked many of the attributes necessary to minimize the risk of arbitrary intrusion into the personal liberty and privacy of the motorists. Consistent with Article I, section 7, the officers did wear official uniforms, and the officers had one marked patrol car at each end of the roadblock with flashing emergency lights. However, contrary to our decision in Downey, the roadblock was operated with little regard to the safety of the approaching
534 motorists. Although the *534 roadblock was conducted at night, the record shows that the officers did not use any lighting separate from the patrol cars, and it appears that the officers could safely stop cars only on one side of the road. Further contrary to Downey, the officers placed no advanced warning signs giving approaching motorists notice of the upcoming roadblock. Not only is this requirement especially important to ensure the safety of motorists, but the presence of advanced warning signs also "reassure[s] motorists that the stop is duly authorized," thereby diminishing the possibility of surprise, concern, or fright. See Ingersoll, 743 P.2d at 1316. Although the Constitution does not require all of these specific measures, we cannot conceive of a reasonable roadblock that fails to adequately protect the safety of the passing motorists.

Further, we find that no advance publicity was given to the public at large that the highway patrol intended to conduct a roadblock in this area. We emphasize that the advance publicity requirement of Downey was not merely an afterthought or a constitutionally needless restriction upon otherwise legitimate law enforcement activity. Apart from the important deterrence aspects discussed earlier, advanced publicity also gives citizens the important choice of not exposing themselves to state intrusion without prior suspicion of wrongdoing. Moreover, citizens who are aware that they may be subject to roadblocks have more of a basis to "anticipate and understand the circumstances" of the stop. See Jones v. State, 459 So.2d 1068, 1076 (Fla.Dist.Ct.App. 1984). Although the absence of publicity will not invariably render a checkpoint invalid if other measures satisfy these concerns, the advanced publicity requirement of Downey must nevertheless be regarded as a key aspect of a minimally intrusive roadblock. Accordingly, we find that the absence of many of the attributes necessary to minimize the risk of arbitrary interference with the liberty and privacy of motorists weighs heavily against finding this roadblock to be constitutionally reasonable.

PRIOR ADMINISTRATIVE APPROVAL AND ADEQUATE SUPERVISORY AUTHORITY

Most importantly, however, the record does not show that the checkpoint was "established and operated in accordance with predetermined operational guidelines and supervisory authority." First, we find no evidence that this roadblock was initially established with prior administrative authority. Lieutenant Hill testified that he supervised the roadblock during his shift upon orders from Lieutenant Phillips, and the Court of Criminal Appeals found that this fact suggested the presence of prior administrative approval. However, our review of the record indicates that it was Lieutenant Phillips who established this roadblock in the first instance and that Lieutenant Hill was only responsible for its continuation.[9] Downey clearly condemns the same person holding the power to approve and establish a roadblock, and the disconcerting appearance of

535 this fact in any *535 record is necessarily fatal to a finding of reasonableness under Article I, section 7.

> [9] Though admittedly unclear, the record seems to indicate that Lieutenant Hill either continued a roadblock already in operation or that he was the last officer to arrive on the scene to start the operation of an already established checkpoint. Lieutenant Hill's testimony indicates that Lieutenant Phillips was the officer responsible for initially arranging and setting up the roadblock and that Phillips could not establish a roadblock without approval from higher authorities. Because Downey requires that the officer *establishing* the roadblock obtain prior administrative approval, Lieutenant Hill's operation of an already established roadblock is seemingly irrelevant to prove the presence of prior administrative approval.

We recognize the possibility that Lieutenant Phillips obtained administrative approval prior to his establishing of the roadblock, but absolutely no proof of this fact exists in the record. Importantly, Lieutenant Hill was only able to speculate that such may have been the case, and the State did not introduce any other testimony or documentation to show that administrative approval existed in fact. Although the State could have called a witness with actual knowledge, such as Lieutenant Phillips, or otherwise introduced a paper record of the prior approval from the Department of Safety, it did neither. Because the State has the burden of establishing the reasonableness of the roadblock, it must introduce *some* proof of prior administrative approval before courts may conclude that such was the case. Unlike the intermediate court, we attribute little significance to the fact that Lieutenant Hill was unconnected with the establishment of this roadblock, and we are not willing to equate this circumstance with actual proof of prior administrative approval as required byDowney. Because the State introduced no other proof of prior administrative approval, we find that the preponderance of the evidence establishes that the roadblock was not initiated in conformity with constitutional requirements.

Second, the record shows that the discretion of the officers on the scene of this roadblock was not properly limited or supervised and that the officers actually conducting the checkpoint had virtually complete discretion to decide for themselves the procedures to be used in its operation. Although the Department of Safety has issued administrative guidelines to be followed at drivers' license roadblocks, the extreme deviations from General Order 410 in this case demonstrate that adequate supervision was practically nonexistent. Despite Lieutenant Hill's affirmative obligation to ensure compliance with General Order 410, see General Order 410, para. V.C. (effective Sept. 30, 1995), the record indicates that the following violations of the General Order occurred: (1) officers used the roadblock to search for crimes other than violations of drivers' license requirements, as evidenced by the presence of a drug dog and the pictures of the "North Chattanooga rapist," id. para. VI.A; (2) the officers did not clearly convey their intent to check for valid drivers' licenses to all motorists as they were stopped, id. para. VI.B; (3) the officers did not post any signs to warn motorists that a roadblock was ahead, id. para. VI.D.2; (4) officers other than uniformed commissioned officers of the Tennessee Highway Patrol stopped vehicles and demanded exhibition of the operator's license, id. para. VII.B.2;[10] (5) the officers did not use orange safety vests, id. para. VII.D; (6) the officers did not use orange or red flashlight batons, id. para. VII.D; and (7) the officers did not use spotlights at the scene to give proper illumination, id. para. VII.F. Had the supervision of the officers on the scene been adequate, we have no doubt that many, if not all, of these violations would have been either
536 prevented or corrected.[11] *536

10 At the suppression hearing, Lieutenant Hill admitted that the practice of county deputies stopping cars to check licenses, even at a roadblock, is contrary to General Order 410 and that such a practice is also contrary to his understanding of Tennessee Code Annotated sections 40-7-103(b) and 55-50-351(a). The fact that he permitted the roadblock to continue operation in violation of several statutes is strong evidence that the roadblock was not conducted with adequate supervision.

11 Our opinion today should in no way be construed as giving constitutional approval to drivers' license roadblocks conducted in the manner contemplated by General Order 410. We mention the numerous and substantial deviations from the administrative regulations only to demonstrate that little or no supervisory authority existed on the scene of this roadblock. To the extent that any General Order regulating any type of roadblock is inconsistent with our decision in this case or with our decision in Downey, no measure of compliance with that Order will sustain the checkpoint as reasonable under Article I, section 7.

Moreover, the testimony given at the suppression hearing demonstrates that Lieutenant Hill did not adequately supervise the conduct of the officers during the appellant's stop. For example, Sergeant Short of the Chattanooga Police Department testified that Lieutenant Hill was completely unaware of the following circumstances: that the appellant's car had been pulled over solely on the authority of local officers; that the officers detected the smell of marijuana in the appellant's car; that the officers conducted a canine sniff of the appellant's car; or that the officers proceeded to search the car. It was only after the appellant's arrest that Lieutenant Hill was made aware of these proceedings. Sergeant Short further testified that during this time, Lieutenant Hill was "standing in the road," apparently unconcerned with what the local officers were doing around him.

We conclude that the extreme deviations from the administrative guidelines, coupled with testimony about the nature of the supervision, demonstrate that the discretion of the officers on the scene was not limited in any meaningful sense. Our decision in Downey was adamant that genuine limitations on the officers' discretion was an essential component of the roadblock exception to Article I, section 7, and we rejected the view that the absence of formal, supervisory participation was entitled to "little weight." 945 S.W.2d at 110. To the contrary, active and careful supervision is critical to the constitutional reasonableness of any roadblock, and because the record indicates that the discretion of the officers in this case was not limited in any significant manner, we conclude that this roadblock fails analysis under our interpretation of Article I, section 7 inDowney.

THE EFFECT OF A SUBTERFUGE OR PRETEXT

Finally, the preponderance of the evidence suggests that the roadblock in this case was actually operated for purposes other than as a drivers' license checkpoint. In Downey, we alluded to the fact that an ostensibly legitimate roadblock operated as a pretext or subterfuge to further illegitimate law-enforcement practices may be unreasonable under the Tennessee Constitution. 945 S.W.2d at 111. However, we did not actually reach this issue in Downey, because the actual purpose of the drivers' license roadblock in that case was to detect and deter drunk drivers — a legitimate and sufficiently compelling state interest. Because we found that the primary purpose of the Downey roadblock was constitutionally permissible, the analysis of that case more properly focused on the lack of adequate administrative and supervisory oversight.

Nevertheless, we acknowledged then, and we reiterate now, that a checkpoint designed or operated to further illegitimate law enforcement practices under the pretext of a lawful purpose is unreasonable under Article I, section 7, irrespective of other indicia of reasonableness. If the subterfuge exists on the administrative or planning level, such that the roadblock is primarily designed to further a noncompelling state interest, the roadblock will necessarily fail for lack of a
537 sufficiently compelling state interest. See *537 Edmond, 531 U.S. at 44, 47. Furthermore, operation of a roadblock so as to pursue illegitimate objectives is virtually incontrovertible evidence that inadequate levels of control and supervision of the officers on the scene are being maintained. Downey, 945 S.W.2d at 111. While we will not seek to determine the intent of the individual officers in the field once a sufficiently compelling state interest is found, cf. Vineyard, 958 S.W.2d 736, the actions of the officers and the circumstances surrounding the stops should be considered as evidence of inadequate administrative and supervisory oversight.

Our close examination of the record reveals much evidence to show that this drivers' license roadblock was designed and operated as a method to pursue objectives other than detecting and deterring unlicensed drivers. On the administrative level, the time and place of the roadblock do not seem calculated, at least in an intuitive sense, to detect unlicensed drivers, and the fact that the State introduced no proof that the time and site of the roadblock were chosen because of their effectiveness in detecting and deterring unlicensed drivers further indicates that the "drivers' license" checkpoint was a subterfuge.[12] On the operational level, the record shows that at least one officer on the scene possessed and used a drug dog, and another officer seems to have conducted the roadblock for the purposes of apprehending a fleeing felon. Because neither of these purposes is arguably related to any interest served by a checkpoint established to detect and deter unlicensed drivers, see United States v. Morales-Zamora, 974 F.2d 149, 153 (10th Cir. 1992) (finding pretextual drivers' license checkpoint, in part, when officers brought drug dog to scene before cars were stopped), one may infer that at least some officers were pursuing investigatory agendas that were wholly distinct and apart from the State's claimed interest.

12 The trial court made no finding of the primary purpose of this roadblock, and we need not do so here. On appeal, though, the prevailing party at the suppression hearing is entitled to the strongest legitimate view of the evidence, State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996), and as no proof exists to the contrary, a reasonable inference arises that the time and place of the roadblock were not chosen so as to detect unlicensed drivers. Indeed, if one assumes that the vast majority of citizens, licensed or unlicensed, will not be traveling on the roads at 2:00 a.m., one may infer that the roadblock was not designed to deter unlicensed drivers either.

While officers are not required to look the other way when they legitimately discover violations, they may not, as appears to have happened here, actively seek out other criminal wrongdoing under the guise of checking for drivers' licenses.[13] In
538 *538 State v. Vineyard, 958 S.W.2d 730 (Tenn. 1997), we held that an officer's subjective intentions in stopping an automobile, no matter how questionable, would not affect the validity of the stop so long as probable cause existed to believe that the defendant violated the traffic code. 958 S.W.2d at 737. We reasoned that the dangers presented by an individual officer's investigatory agenda were mitigated in such cases because " [t]he probable cause requirement constrains the exercise of police discretion and safeguards the citizenry against arbitrary intrusions." Id. at 735 (citing Whren v. United States, 517 U.S. 806 (1996)).

13 Indeed, we take notice of the fact that the sobriety roadblocks, which we permitted in Downey only under heightened constitutional requirements, are being operated in some cases under the guise of "drivers' license" checkpoints without regard to Downey. For example, in State v. Steward, No. M1999-01284-CCA-R3-CD, 2000 WL 1246436 (Tenn.Crim.App. filed at Nashville, Aug. 30, 2000), the Court of Criminal Appeals noted the following candid testimony from an officer who participated in a "drivers' license" checkpoint:

> THE COURT: Trooper, why did Sergeant Ray, I suppose, decide to conduct one kind of roadblock instead of the other?
>
> [Trooper] McALLISTER: Usually, all we hold is the traffic enforcement-type roadblock. The sobriety roadblocks, [under General Order] 410.1, require a minimum of six officers and that the colonel pre-approve it five days prior to that.
>
> THE COURT: So you just decided not to do that and you're going to do the other kind [of roadblocks] and catch the same people?
>
> McALLISTER: I've been on the [force] for two years, all I've ever held is a traffic enforcement-type roadblock.

We are unsure how law enforcement officers have come to believe that drivers' license roadblocks may be operated with less concern for constitutional requirements than sobriety roadblocks. Article I, section 7 certainly makes no distinction, and we note that the roadblock in Downey itself was nominally a drivers' license checkpoint. To be sure, no authority from this Court exists for the proposition that drivers' license checkpoints may be operated under different and lessened constitutional standards merely because of the label attached to them.

However, because roadblocks are operated without the protections provided by the probable cause requirement, courts must assume a special role in ensuring that constitutional safeguards are not eroded by subterfuge or pretext. Cf. United States v. Huguenin, 154 F.3d 547, 555 (6th Cir. 1998) ("We believe the Fourth Amendment requires that police deception and subterfuge must be carefully scrutinized in regard to pretextual checkpoints, as checkpoints constitute an exception to the Fourth Amendment's requirement for a warrant and probable cause."). When police officers are permitted, either through administrative design or supervisory neglect, to actively engage in suspicionless investigation of criminal activity wholly unrelated to the purposes of the roadblock, the constitutional protections afforded by Article I, section 7 are rendered utterly without effect or meaning. To be sure, our decision in Downey allowing a narrow exception for sobriety checkpoints was not meant as a signal to law enforcement officers that a citizen's constitutional protections evaporated upon being halted at a roadblock.

Considering all of the circumstances surrounding this roadblock, we must conclude that the preponderance of the evidence establishes that the operation of this roadblock violated minimal constitutional requirements. First, the level of intrusion into the liberty and privacy of the citizens stopped was beyond that characterized as reasonable by Downey. Second, the State offered no evidence to show prior administrative approval, and because the State has the burden of establishing the reasonableness of the roadblock, we will not presume that such was the case. Third,

the record demonstrates that the officers on the scene decided for themselves the proper procedures to be followed and that these officers were not adequately supervised. Finally, the record contains much evidence to show that the drivers' license roadblock was initially established and operated in the field as a method to pursue objectives other than to detect and deter unlicensed drivers. Accordingly, we hold that this roadblock represented an unreasonable interference with the liberty and privacy of the citizens stopped in violation of Article I, section 7 of the Tennessee Constitution.

CONCLUSION

In summary, we hold that the drivers' license roadblock in this case violates the protections against unreasonable seizures found in Article I, section 7 of the Tennessee Constitution. First, the State has failed to demonstrate a sufficiently
539 compelling state interest to justify *539 suspicionless stops to check drivers' licenses. Second, even assuming the presence of a compelling state interest, the State has not shown that roadblocks are "sufficiently productive" in achieving that interest such that they could "qualify as a reasonable law enforcement practice." Finally, we find that the operation of this roadblock was not conducted according to predetermined operational guidelines or with adequate supervisory authority that would minimize the risk of arbitrary intrusion on individual liberty and limit the discretion of officers at the scene. Accordingly, the decision of the trial court to suppress all evidence derived from the roadblock is affirmed. We reverse the judgment of the Court of Criminal Appeals and dismiss the indictment against the appellant.

Costs of this appeal shall be paid by the State of Tennessee.

Anderson, E. Riley, C.J., concurring.

The majority concludes that the drivers' license roadblock in this case was established and operated in violation of this Court's decision in State v. Downey, 945 S.W.2d 102 (Tenn. 1997) and, therefore, violated article I, § 7 of the Tennessee Constitution. Although I agree with the result and much of the majority's analysis under Downey, I write separately to express my view that roadblocks used to seize motorists for the purpose of inspecting drivers' licenses are per se unconstitutional under article I, § 7 of the Tennessee Constitution.

As the majority observes, article I, § 7 of the Tennessee Constitution, like the Fourth Amendment to the United States Constitution, prohibits unreasonable searches and seizures and also imposes limits on searches and seizures in order to prevent arbitrary interference by law enforcement with the privacy and personal liberty of individuals. Id. at 104. In general, a seizure of an individual requires probable cause to believe that the individual has committed a criminal offense. See Beck v. Ohio, 379 U.S. 89, 91, 85 S.Ct. 223, 225, 13 L.Ed.2d 142 (1964). A seizure short of an arrest may be made on lesser grounds than probable cause, but still requires a reasonable suspicion of criminal activity based on articulable facts. See Terry v. Ohio, 392 U.S. 1, 21, 88 S.Ct. 1868, 1880, 20 L.Ed.2d 889 (1968); State v. Simpson, 968 S.W.2d 776, 780 (Tenn. 1998).

The analysis in Downey emphasized that "a roadblock seizure . . . is a departure from these fundamental constitutional principles" because it "permits officers to stop and question persons whose conduct is ordinary, innocent, and free from suspicion." Downey, 945 S.W.2d at 104. We therefore held that a determination of whether such a roadblock seizure passes constitutional muster under article I, § 7 of the Tennessee Constitution requires careful consideration of (1) the public interest allegedly served by the roadblock, (2) the degree to which the public interest is advanced by the roadblock, and (3) the

severity of the interference with the individual liberty of those subjected to the roadblock. Id. at 107-08.

In applying this analysis in Downey, it is immediately apparent that we gave great weight to the public interest served by a sobriety roadblock:

> We recognize the State's compelling interest in detecting and deterring motorists who drive while under the influence of alcohol. The drunk driver cuts a wide swath of death, pain, grief, and
> 540 untold *540 injury across the roads of Tennessee. The carnage and tragedy is recorded daily in our newspapers and on our television screens. Indeed, the Legislature at nearly every session has strengthened the driving under the influence laws in recognition of the strong public interest in solving the problem. No one can dispute the tragedy and magnitude of the drunk driving problem or the State's interest in eradicating it.

Id. at 104. As the majority observes, the obvious and compelling public interest in drunk driving cases is to prevent the imminent danger of death or serious bodily injury posed by motorists who drive while impaired and lack the ability to operate their vehicles in a safe manner.

In addition, despite the weighty and compelling public interest in Downey, we did not simply approve of any and all sobriety roadblocks. In no case does the public interest alone justify a search or seizure — the ends, in other words, do not justify any and all means. Instead, as the majority indicates, we held in Downey that the public interest must also be advanced by the roadblock and that the roadblock must be established and operated in accordance with "predetermined operational guidelines and supervisory authority that minimize the risk of arbitrary intrusion on individuals and limit the discretion of law enforcement officers at the scene." Id. at 104. After carefully considering these factors in Downey, we concluded that although sobriety roadblocks are not per se unconstitutional, the specific roadblock in question was not established and operated in a manner that limited the discretion of individual officers at the scene and thus violated article I, § 7 of the Tennessee Constitution.Id.

In contrast, application of the Downey analysis yields a different result when applied to roadblocks used to stop motorists for the purpose of checking drivers' licenses.[1] With regard to the first Downey factor, for example, the State asserts the general argument that drivers' license roadblocks, like sobriety roadblocks, serve the public interest of maintaining highway safety. The dissent likewise theorizes that such roadblocks serve a "critical interest in protecting its citizens from drivers who are either not qualified to drive or have been forbidden to drive because of a record of driving offenses." Neither the State nor the dissent offer or cite to any empirical evidence, anecdotal evidence, or even persuasive argument in support of their assertions.

> [1] Such a conclusion does not require either an expansion or revision to the Downey analysis. Instead, it is the application of Downey to a completely different set of circumstances that warrants this result.

In my view, there is no basis upon which to reasonably conclude that a motorist who is not in possession of a valid drivers' license necessarily poses an immediate danger of death or serious bodily injury great enough to warrant the suspicionless stop of all drivers at a checkpoint. Indeed, even the possession of a valid drivers' license does not necessarily assure the safety and fitness of any motorist. In Tennessee, for example, motorists who obtain a drivers' license at the age of 16 may never again during their lifetimes be tested or examined to ensure their continued skill and fitness. See Tenn. Code Ann. § 55-50-322 (1998 Supp. 2000). In short, the present case is easily distinguishable from the sobriety checkpoints at issue in Downey. The State has

presented no empirical evidence, anecdotal evidence, or persuasive argument that would demonstrate that the public interest served by
541 drivers' license roadblocks even remotely *541 approaches that served by sobriety roadblocks.

I differ from the majority's analysis to the extent that it asserts the State should have an opportunity to establish a sufficient public interest supporting drivers' license checkpoints in a future case. Although the defendant's motion to suppress did not expressly allege that drivers' license roadblocks are per se unconstitutional, it did broadly allege that the "roadblock was conducted in violation of the `predetermined operational guidelines,' and in violation of Article I, section 7 of the Tennessee Constitution." The issue has been fully briefed and argued on appeal without objection by the State. Moreover, I would note that the State established its interest in Downey not by introducing empirical evidence in the trial court but by presenting anecdotal evidence and asserting persuasive arguments. Neither were presented in this case.[2]

> [2] I am also of the view that the practical effect of the majority's holding correctly makes the State's interest in drivers' license roadblocks all but impossible to establish and is thus tantamount to a per se holding.

With regard to the second Downey factor, I seriously question whether drivers' license roadblocks are necessary to advance any alleged public interest. The State's argument, mirrored by the dissent, that such roadblocks are the only means through which to enforce the requirement that a motorist possess a valid drivers' license is flawed in at least two respects. First, as a practical matter, the drivers' license requirement is among the most enforced of laws as its production is compelled from any motorist who is stopped for any and all traffic infractions. Second, and more importantly, the simple assertion that there is no other means through which to enforce a law as effectively as using a roadblock in no way creates a compelling public interest for doing so — the end, in other words, should not and does not justify the means.

Finally, in light of my conclusions with respect to the first two Downey factors, I would further observe that even a drivers' license roadblock that minimized the risk of arbitrary intrusion on individuals and limited the discretion of law enforcement officers at the scene would fail to satisfy article I, § 7. In short, the intrusiveness of any roadblock that neither serves a compelling public interest nor advances that interest is by definition excessive.

In reaching my conclusions, I stress that our decision inDowney upholding sobriety roadblocks under certain limited circumstances should be interpreted as a very rare and limited departure from constitutional principles that require a seizure to be based on probable cause or reasonable suspicion of criminal activity. In my view, there is no similar compelling public interest that is advanced through the use of roadblocks to seize motorists for the inspection of drivers' licenses. I would therefore hold that drivers' license roadblocks are per se unconstitutional under article I, § 7 of the Tennessee Constitution. In all other respects, I agree with the majority's opinion. I am authorized to state that Justice Birch joins in this separate concurring opinion.

Frank F. Drowota, III, J., concurring and dissenting.

I concur in the result reached by the majority because the evidence in this record establishes that the operation, location, and duration of this license checkpoint was solely within the discretion of Lieutenant Ronnie Hill of the Tennessee Highway Patrol. I, however, cannot agree with the analysis
542 employed by the majority to reach *542 this result. The majority's analysis is an unnecessary and unwarranted modification of the analysis adopted in Downey which effectively renders license checkpoints unconstitutional. In my view, license

checkpoints are not per se unconstitutional, although they may be administered in an unconstitutional manner, as in this case, when supervisory approval of the location and time of the checkpoint is not sought, and/or the checkpoint is not conducted in accordance with an administrative plan containing explicit limitations on the conduct and discretion of officers in the field.

Analysis

The facts of this case are largely undisputed and accurately stated by the majority. The majority and I disagree, however, as to the proper interpretation and application of the law. In State v. Downey, 945 S.W.2d 102, 110-11 (Tenn. 1997), we considered a constitutional challenge to sobriety checkpoints. To analyze this challenge, we adopted as the standard for the Tennessee Constitution a three-pronged balancing test which previously had been employed by the United States Supreme Court to determine the constitutionality of highway checkpoints. See Michigan v. Sitz, 496 U.S. 444, 110 S.Ct. 2481, 110 L.Ed.2d 412 (1990) (upholding sobriety checkpoints); United States v. Martinez-Fuerte, 428 U.S. 543, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976) (upholding highway checkpoints near the border aimed at detecting illegal aliens); See also Brown v. Texas, 443 U.S. 47, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979) (holding that application of a Texas statute permitting detention and requiring identification violates the Fourth Amendment if officers lack reasonable suspicion for the detention).

This balancing test requires consideration of "(1) the gravity of the public concerns served by the roadblock; (2) the degree to which the roadblock advances the public interests; and (3) the severity of the roadblock's interference with an individual's liberty or privacy interest." Downey, 945 S.W.2d at 107 (quoting Brown, 443 U.S. at 40-51, 99 S.Ct. at 2640). "A central concern in balancing these competing considerations in a variety of settings has been to assure that an individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field." 945 S.W.2d at 107, (internal citations omitted). In the highway checkpoint context, this concern is alleviated by requiring that checkpoints be carried out pursuant to supervisory control and a plan containing explicit limitations on the conduct and discretion of individual field officers. See Id.

Applying this test in Downey, we described as "compelling," the State's interest in detecting and deterring motorists who drive while under the influence of alcohol. Moreover, we recognized that sobriety checkpoints effectively advance this interest and aid in eliminating this serious public danger. Therefore, we held that sobriety checkpoints are constitutional so long as they are "established and operated in a manner that minimizes intrusion and limits discretion." Downey, 945 S.W.2d at 110. To ensure that such checkpoints impose only minimal intrusion on individual privacy and limit official discretion, we adopted the following guidelines originally articulated by the California, Iowa, and Kansas supreme courts:[1]

> [1] Downey, 945 S.W.2d at 109-10 (adopting guidelines fromIngersoll v. Palmer, 743 P.2d 1299 (Cal. 1987); State v. Loyd, 530 N.W.2d 708 (Iowa 1995); State v. Deskins, 673 P.2d 1174 (Kan. 1983)).

> The guidelines include supervisory authority which carefully targets the time
> 543 *543 and location of roadblocks and establishes neutral procedures for their operation. They also include adequate warnings, advance publicity, minimizing length and nature of detention, adequate safety precautions, and the availability of less intrusive methods for combating the problem.

Id. at 110-11.

Downey is a very recent, unanimous, and comprehensive decision. However, rather than applying the three-pronged balancing test adopted in Downey, the majority states that license roadblocks are unconstitutional unless the State offers specific proof showing that

> drivers not possessing a license are unable to safely operate motor vehicles on the roads and highways of his state; that an unlicensed driver invariably presents an imminent danger of death or serious bodily injury to other drivers that is not typically present with licensed drivers; and that the safety threat from unlicensed drivers is of such a magnitude that the problem, coupled with its risk of harm, commands heightened attention. Only when this showing is made may courts find that the State has a sufficiently compelling interest to justify maintaining drivers' license roadblocks.

The obvious effect of the majority's adoption of this standard — one that the State cannot possibly meet — is to hold that drivers' license checkpoints are unconstitutional in Tennessee.[2] Indeed, two members of the Court express this view.

> [2] As a practical matter, the majority's holding in this regard has little impact since sobriety checkpoints still may be constitutionally maintained, so long as they comport with the guidelines in Downey. Obviously, drivers licenses can be verified at sobriety checkpoints.

Such a result clearly is contrary to the overwhelming weight of authority. State and federal courts alike almost universally employ the three-pronged balancing test adopted in Downey when analyzing the constitutionality of license checkpoints. See, e.g., State v. Orr, 745 N.E.2d 1036, 1038-40 (Ohio 2001). Employing this test, courts in at least twenty-five states and the District of Columbia have upheld some form of license checkpoints.[3] 544 *544 This number includes one state supreme court which struck down sobriety checkpoints on state constitutional grounds. See State v. Koppel 499A.2d 977, 980 (N.H. 1985) (striking down sobriety checkpoints but finding license checkpoints a reasonable means of enforcing a legitimate state interest because, without such checkpoints, most violations are undetectable).[4] In addition to the many state courts, at least four circuit courts of appeal have upheld the constitutionality of license checkpoints.[5]

> [3] See McInnish v. State, 584 So.2d 935 (Ala.Crim.App. 1991); Camp v. State, 764 S.W.2d 463 (Ark.Ct.App. 1989); People v. Alvarez, 926 P.2d 365 (Cal. 1996); People v. Andrews, 484 P.2d 1207 (Colo. 1971); Howard v. Voshell, 621 A.2d 804 (Del.Super. 1992); Duncan v. United States, 629 A.2d 1 (D.C. App. 1993);Rennard v. State, 675 So.2d 1006 (Fla.Ct.App. 1996); LaFontaine v. State, 497 S.E.2d 367 (Ga. 1998); People v. Bartley, 486 N.E.2d 880 (Ill. 1985); State v. Loyd, 530 N.W.2d 708 (Iowa 1995); State v. Barker, 850 P.2d 885 (Kan. 1993); Kinslow v. Commonwealth, 660 S.W.2d 677 (Ky.Ct.App. 1983); State v. Jackson, 764 So.2d 64 (La. 2000); State v. Cloukey, 486 A.2d 143 (Me. 1985); Miller v. State, 373 So.2d 1004 (Miss. 1979); State v. Severance, 237 A.2d 683 (N.H. 1968); State v. Kabayama, 226 A.2d 760 (N.J.Super. Ct. App. Div. 1967), affirmed without opinion by 246 A.2d 714 (N.J. 1968); State v. Valencia-Olaya, 736 P.2d 495 (N.M.Ct.App. 1987);State v. Grooms, 483 S.E.2d 445 (N.C.Ct.App. 1997); State v. Wetzel, 456 N.W.2d 115 (N.D. 1990); State v. Orr, 745 N.E.2d 1036 (Ohio 2001); State v. Shankle, 647 P.2d 959 (Or.Ct.App. 1982);Commonwealth v. Blouse, 611 A.2d 1177 (Pa. 1992); Murphy v. State, 864 S.W.2d 70 (Tex.Ct.App. 1992); Lowe v. Commonwealth, 337 S.E.2d 273 (Va. 1985); State v. Davis, 464 S.E.2d 598 (W. Va. 1995). It is also significant to note that the Tennessee Court of Criminal Appeals

previously has upheld the constitutionality of license checkpoints. See, e.g., State v. Joe W. Steward, No. M1999-01284-CCA-R3-CD, 2000 WL 1246436 (Tenn.Crim.App., Aug. 18, 2000) (perm. app. pending); State v. David Lynn Hagy, No. 03C01-9505-CR-00152, 1995 WL 71(Tenn.Crim.App., Dec. 5, 1995) (Barker, J., author) (no app. filed); State v. David Arthur McCarter, No. 03C01-9406-CR-00240, 1995 WL 103704 (Tenn.Crim.App., Mar. 13, 1995) (perm. app. denied Tenn. July 10, 1995).

4 Presumably license checkpoints would be found unconstitutional in the other four states that find sobriety checkpoints unconstitutional. See Sitz v. Department of State Police, 506 N.W.2d 209 (Mich. 1993); Ascher v. Comm'r of Public Safety, 519 N.W.2d 183 (Minn. 1994); Pimental v. Department of Transp., 561 A.2d 1348 (R.I. 1989); Seattle v. Mesiani, 755 P.2d 1057 (Wash. 1988). Massachusetts is the only other state supreme court which has suggested that license checkpoints may be vulnerable to constitutional attack. See Commonwealth v. Rodriguez, 722 N.E.2d 429, 433 (Mass. 2000).

5 United States v. Galindo-Gonzales, 142 F.3d 1217 (10th Cir. 1998); Merrett v. Moore, 58 F.3d 1547 (11th Cir. 1995);United States v. Trevino, 60 F.3d 333 (7th Cir. 1995); United States v. McFayden, 865 F.2d 1306 (D.C. Cir. 1989).

While the United States Supreme Court has not squarely addressed this issue, the Court concluded in Delaware v. Prouse, 440 U.S. 648, 658, 99 S.Ct. 1391, 1398, 59 L.Ed.2d 660 (1979), that states have a "vital interest in ensuring that only those qualified to do so are permitted to operate motor vehicles, that these vehicles are fit for safe operation, and hence that licensing, registration, and vehicle inspection requirements are observed." The Court also suggested in Prouse that roadblock-type stops for the purpose of verifying drivers' licenses and vehicle registrations would be constitutionally permissible. Id., 440 U.S. at 653, 99 S.Ct. at 1401. More recently, in City of Indianapolis v. Edmond, 531 U.S. 32, 47, 121 S.Ct. 447, 457, 148 L.Ed.2d 333 (2000), the Court struck down drug interdiction checkpoints implemented primarily to uncover evidence of criminal wrongdoing, but stressed that its holding did not implicate the constitutionality of license checkpoints:

> It goes without saying that our holding today does nothing to alter the constitutional status of the sobriety and border checkpoints that we approved in Sitz and Martinez-Fuerte, or of the type of traffic checkpoint that we suggested would be lawful in Prouse. The constitutionality of such checkpoint programs still depends on a balancing of the competing interests at stake and the effectiveness of the program.

Id. (emphasis added). This statement strongly indicates that when the issue is squarely presented, the United States Supreme Court, applying the same standard adopted by this Court in Downey, would uphold the constitutionality of license
545 checkpoints[6]. *545

6 Justice Barker's opinion relies upon Edmond to support its conclusion. My reading of Edmond reveals that it in no way supports the premise that license checkpoints are unconstitutional. The Court in Edmond very carefully and clearly indicated that its holding did not affect the validity of license checkpoints. In addition, in footnote 2, the Court pointed out that the City of Indianapolis had conceded that narcotics detection was the primary programmatic purpose of the checkpoints at issue in that case. The Court based its decision on the programmatic purpose of the checkpoints, not on an individual checkpoint, so, of course, the Court did not consider the specifics of how the checkpoints were established. The Court

> specifically recognized that it "need not decide whether the State may establish a checkpoint program with the primary purpose of checking licenses or driver sobriety and a secondary purpose of interdicting narcotics." Edmond, 531 U.S. at 47, 121 S.Ct. at 457. This statement clearly indicates that the Court views license checkpoints as constitutionally valid in the same way it views driver sobriety checks constitutionally valid. The Edmond decision simply does not support the majority's conclusions.

I fully realize this Court is free to interpret our state constitutional provisions as affording greater protections than those afforded by the federal constitution. However, we declined to do so in Downey when we adopted the three-pronged federal test as the standard for determining the state constitutionality of highway checkpoints. In fact, we stated in Downey that "Article I, Section 7 is identical in intent and purpose with the Fourth Amendment." 945 S.W.2d at 106. Therefore, I am puzzled by the majority's decision to now re-interpret Downey as affording greater protection.[7]

> [7] Effectively the majority is interpreting the United State Constitution to provide greater protection than the United States Supreme Court's own federal constitutional precedents have provided, even though the majority clearly has no authority to do so. See Arkansas v. Sullivan, 532 U.S. 769, 121 S.Ct. 1876, 149 L.Ed.2d 994 (2001) (holding that the Arkansas Supreme Court may not interpret the United States Constitution to provide greater protection than the United States Supreme Court's own federal constitutional precedents provide).

In addition, a more expansive interpretation of Article I, Section 7 is not appropriate in this context. We have previously recognized that when interpreting Article I, Section 7, we will depart from federal precedent only when "(1) adopting federal Fourth Amendment standards would require overruling a settled development of state constitutional law; and (2) when linguistic differences justify distinct interpretations of state and federal constitutional provisions." State v. Vineyard, 958 S.W.2d 730, 733-34 (Tenn. 1997) (internal quotations omitted). Certainly, following federal precedent in this context does not require overruling a settled development of state constitutional law. To the contrary, refusing to follow federal precedent here amounts to an implicit overruling or modification of a very recent state constitutional decision, namely Downey. Moreover, there are no linguistic differences justifying a distinct interpretation of the state constitutional provision in this context. Accordingly, the majority's decision is an unnecessary and unwarranted abandonment of the test recently adopted in Downey.

Moreover, my research reveals that the test adopted by the majority is without precedential support. I have found no decision requiring the State to offer specific proof that the safety threat from unlicensed drivers "invariably presents an imminent danger of death or serious bodily injury to other drivers that is not typically present with licensed drivers and that the magnitude of the problem commands heightened attention."

The majority's assertion that such specific proof is required by Downey is simply incorrect. This Court did not require the State to introduce specific proof on the risks posed by drunk drivers to establish the constitutional validity of sobriety checkpoints in Downey. We merely recognized the national statistics about the dangers and risks posed by drunk drivers.See, Downey, 945 S.W.2d at 110 (summarizing statistics quoted by the United States Supreme Court in Michigan v. Sitz, 496 U.S. at 456, 110 S.Ct. at 2488). Also erroneous is the majority's assertion that Downey requires the State to advance a "compelling" interest before analysis continues *546 under the three-pronged test. While the adjective "compelling" was used inDowney to describe the public interest at stake in detecting and deterring

drunk drivers, nowhere does Downey suggest that the State is required to advance a "compelling" interest to justify further analysis of the constitutionality of a suspicionless highway checkpoint. Indeed, the test adopted in Downey requires only aweighing of "(1) the gravity of the public concerns served by the roadblock; (2) the degree to which the roadblock advances the public interests; and (3) the severity of the roadblock's interference with an individual's liberty or privacy interest." Downey, 945 S.W.2d at 107. Of course, the "gravity" — strength or seriousness — of the public concern or State's interest will affect the weighing process, but no case, certainly not Downey, has required the State to establish a compelling interest as a threshold matter to continue the three-pronged analysis, as the majority opinion appears to require.[8]

[8] Interestingly, the majority attempts to limit the showing it adopts to suspicionless, non-emergency investigatory roadblocks and attempts to distinguish fixed weigh-and-inspection stations established by statute. With all due respect, this is a distinction without a difference. Certainly the state's interest in keeping unlicensed drivers off the roadways is just as great, if not greater, than the interest protected by the weigh-and-inspection stations established by statute. Furthermore, I know of no principle of law that suggests suspicionless stops authorized by statutes are subject to less intensive constitutional scrutiny than other suspicionless stops. In fact, the United States Supreme Court decision in Brown, which struck down a Texas statute that was applied to authorize suspicionless detentions, would seem to suggest that there is no constitutional difference between suspicionless stops authorized by statute and those initiated without a statute. See, Brown, 443 U.S. at 53, 99 S.Ct. at 2640.

In my view, proper application of the three-pronged balancing test adopted in Downey results in a finding that license checkpoints are not per se unconstitutional. With respect to the first factor, the gravity of the public concern, I again note that the United State Supreme Court and many other state courts, including the Court of Criminal Appeals, have recognized that states have a "vital interest" in ensuring highway safety by removing unlicensed drivers from the roadways.[9] "Automobile licenses are issued periodically to evidence that the drivers holding them are sufficiently familiar with the rules of the road and are physically qualified to operate a motor vehicle." Prouse, 440 U.S. at 658, 99 S.Ct. at 1398. Persons who are too young to drive pose a threat to public safety. See Orr, 745 N.E.2d at 1040-41. Persons who have had their licenses suspended for driving under the influence convictions or traffic offenses often disregard the suspension and drive anyway, endangering the public.Id. In short, the State has a critical interest in protecting its citizens from drivers who either are not qualified to drive or have been forbidden to drive because of a record of driving offenses. Id. at 1041.

[9] Prouse, 440 U.S. at 658, 99 S.Ct. at 1398; Hagy, 1995 WL 712355, *2.

With respect to the second factor, the degree to which the checkpoint advances the public interest, it seems obvious that there is no better way, indeed no other way, to advance the public interest in detecting unlicensed drivers than license checkpoints. As the New Hampshire Supreme Court has recognized, license checkpoints are "the only effective means available to law enforcement authorities of enforcing the license and registration laws." Koppel, 499 A.2d at 980. Moreover, the
547 Ohio Supreme Court has recognized: *547

> [c]ompounding the danger to the public from unlicensed drivers is the fact that much of the danger is hidden from plain view. While many types of dangerous motorists — drunk drivers, for example — exhibit erratic driving, the unlicensed driver often displays no observable characteristics. Police officers on roving patrol cannot pull over a vehicle for the sole purpose of checking the driver's license and registration. Therefore, without checkpoints, the only way in which police can identify an unlicensed driver is by waiting for the driver to commit a driving offense. In at least some instances, the offense would not even have occurred had the offending driver been detected earlier and been removed from the roadways.

Orr, 745 N.E.2d at 1040-41.

The third and final factor for consideration is the severity of the checkpoint's interference with an individual's liberty or privacy interest. License checkpoints constitute only a minimal interference with an individual's liberty interest. The detention is brief, and, if conducted in accordance with appropriate administrative guidelines, individuals suffer little or no subjective anxiety because the checkpoint will be publicized, signs announcing the checkpoint will be conspicuously placed on the highway, and officers will immediately advise individuals as to the purpose of the checkpoint.

Therefore, after weighing these competing interests, as required by the analysis adopted in Downey, I am of the opinion that license checkpoints are not unconstitutional per se. Such checkpoints may be administered in an unconstitutional manner when supervisory approval of the location and time of the checkpoint is not sought, and/or the checkpoint is not conducted in accordance with administrative guidelines limiting the conduct and discretion of officers in the field.

In Downey, we emphasized the importance of supervisory control over site selection and operation of sobriety checkpoints. While I dissented in Downey from the majority's conclusion that the evidence failed to establish supervisory and administrative approval of the sobriety checkpoint, after reviewing the record in this case, I am convinced that the evidence fails to establish supervisory and administrative approval of this license checkpoint.[10]

[10] Interestingly, Lieutenant Hill operated the sobriety checkpoint which resulted in our decision in Downey.

Lieutenant Hill initially testified that he established this roadblock at the direction of his supervisors pursuant to Department of Safety General Order 410, that others had operated roadblocks at this location during the week preceding October 11, 1997, and that he therefore had assumed others had taken the necessary steps to ensure the roadblock complied with General Order 410. However, counsel for Hicks offered documentary evidence from the Department of Safety showing that no roadblocks had been operated at this location prior to those operated by Lieutenant Hill. Also significant is Lieutenant Hill's uncertainty as to why officers from Red Bank and the City of Chattanooga participated in the checkpoint and who summoned them. Unlike Downey, where I viewed the participation of officers from three different jurisdictions as evidence of prior administrative and supervisory approval, Lieutenant Hill's testimony in this case reveals that the multi-jurisdictional participation resulted from mere coincidence rather than
548 advance planning. *548

In addition to the lack of supervisory approval, Hicks offered proof to show that this checkpoint failed in other ways to follow the guidelines established in Downey. For example, this checkpoint had not been previously publicized, no signs were placed on the road indicating the location and imminency of the checkpoint,

motorists were not advised of the purpose of the roadblock, and officers were not using red batons or wearing orange vests as required by General Order 410. Simply stated, the evidence in this record supports and does not preponderate against the trial court's finding that this roadblock was administered in an unconstitutional manner under this Court's decision in Downey. Accordingly, I agree that the Court of Criminal Appeals erred in reversing the trial court's decision granting the defendant's motion to suppress.

Conclusion

For the reasons herein stated, I dissent from the analysis employed by the majority, but I agree with the majority's conclusion that the Court of Criminal Appeals erred in reversing the trial court's judgment granting the defendant's motion to suppress.

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